

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

MITCHELL MOSALLEM, HALUK
ERGULEC, BIRJ DECKMEJIAN

Defendants.

02 Cr. 649 (TPG)

OPINION

-----X

UNITED STATES OF AMERICA

- against -

JOHN CHESSA

Defendant.

02 Cr. 1393 (TPG)

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| -----X | | |
| UNITED STATES OF AMERICA | : | 02 Cr. 1256-01(TPG) |
| | : | |
| - against - | : | <u>OPINION</u> |
| | : | |
| GABRIEL CASAS | : | |
| Defendant. | : | |
| | : | |
| -----X | | |
| UNITED STATES OF AMERICA | : | 02 Cr. 1326-01 (TPG) |
| | : | |
| - against - | : | |
| | : | |
| JOSEPH PANACCIONE | : | |
| Defendants. | : | |
| | : | |
| -----X | | |
| UNITED STATES OF AMERICA | : | |
| | : | 02 Cr. 1385-01 (TPG) |
| - against - | : | |
| | : | |
| JAMES RATTOBALLI | : | |
| Defendant. | : | |
| | : | |
| -----X | | |

It has come to the court's attention that the above-named criminal defendants have overpaid restitution due under their judgments.

In these cases, seven defendants—Haluk Ergulec, Birj Deckmejian, Mitchell Mosallem, John Chessa, Gabriel Casas, Joseph Panaccione, and James Rattobali—were ordered to pay victim Grey Global Group (“Grey Global”) a total of \$1,386,000. Of this total, \$1,089,325 was to be paid individually by four defendants: Ergulec was liable for \$914,000; Mosallem for \$50,325; Rattobali for \$55,000; and Panaccione for \$70,000. All these defendants except Mosallem have satisfied their individual restitution liability to Grey Global. Mosallem has thus far paid \$4,955 of his individual liability, and he still owes Grey Global \$45,370.

The remaining \$296,675 was to be paid pursuant to joint and several judgments. The judgments divided that total among three groups of defendants: Deckmejian, Ergulec, Mosallem, Casas, Chessa, and Panaccione were liable for \$186,000; Mosallem, Panaccione, and Chessa for \$10,675; and Chessa and Panaccione for \$100,000.

The sum of the total individual liability of \$1,089,325 and the total joint and several liability of \$296,675 constitutes the \$1,386,000 the court ordered paid to Grey Global as restitution.

Ergulec paid \$186,000 on the first component of the joint and several total. Chessa paid \$10,675 on the second. Finally, Rattobali paid \$65,094.40 and Panaccione paid \$34,905.60, totaling \$100,000, on the third.

The result is that the payments described above satisfied all of the individual liability, except for that of Mosallem, who still owes \$45,370. All of the joint and several liabilities have been satisfied. Obviously all of the defendants involved in the joint and several liabilities did not share in the payments just described, but according to law and fact, those joint and several liabilities were satisfied.

As it turned out, after the payments described above, certain of the defendants made payments which had the effect of overpaying the joint and several liabilities. Deckmejian paid \$186,000 towards the joint and several restitution already satisfied by Ergulec. Casas paid \$3,677.32 towards the same debt, as did Chessa in the amount of \$23,833.66 and Panaccione in the amount of \$152,769.40. In addition, Rattobali paid an excess of \$34,905.60 towards the \$100,000 debt he shared with Panaccione.

The excess payments were made in the first instance to the Clerk of this court. A certain portion of the excess payments was forwarded to Grey Global, and some of the excess has been retained by the clerk.

In summary, the following defendants have made the following excess payments:

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|--------------------|--------------|
| Birj Deckmejian: | \$186,000.00 |
| Gabriel Casas: | \$ 3,677.32 |
| John Chessa: | \$ 23,833.66 |
| Joseph Panaccione: | \$152,769.40 |
| James Rattoballi: | \$ 34,905.60 |

Grey Global was and is entitled to receive the amounts owed pursuant to the individual liabilities plus the amounts owed pursuant to the joint and several liabilities. As stated, this was a total of \$1,386,000. But Grey Global could only properly receive from each individual defendant with individual liability what that individual owed. And Grey Global could only properly receive from any group involved in joint and several liability what that group owed.

All individuals and groups have satisfied their liabilities to Grey Global except Mosallem, who still owes \$45,370. Grey Global can only recover this from Mosallem, not from any of the other defendants. This means that Grey Global has properly received the total of \$1,386,00 less the \$45,370 still owed by Mosallem—or a net of \$1,340,630.

However, Grey Global has received a total of \$1,471,351.98. This means that Grey Global has received an overpayment of \$130,721.98, which should be refunded to the Clerk's Office.

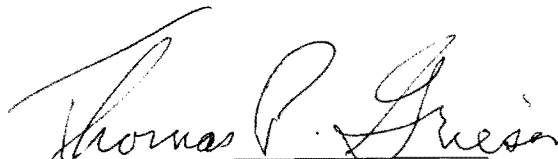
The defendants who have made excess payments are to receive refunds in the amounts listed above. The refunds are to be paid partly from what should be returned by Grey Global and partly from what is currently deposited in the Clerk's Office.

The foregoing discussion concerns only the principal due under the judgments. The overpayments will be less once accrued interest is taken into account. However, the Clerk's Office has not yet calculated this sum.

Accordingly, the court 1) directs the Financial Litigation Unit to provide the Clerk's Office with the final interest accrued on these judgments so that the Clerk's Office can determine the exact extent of the overpayment; 2) directs the victim, Grey Global Group, to refund overpaid monies in the amount of \$130,721.98, less accrued interest, to the court; 3) directs the Clerk's Office to issue checks to the overpaying defendants in the amounts listed above, less accrued interest; and 4) directs the Clerk's Office to notify those defendants who have paid more than their ratable share of joint-and-several liability of their right to file a claim for contribution against co-defendants ordered jointly and severally liable for the same debt.

SO ORDERED.

Dated: New York, New York
December 19, 2011


Thomas P. Griesa
U.S.D.J.